



WEB COPY



W.P.No.15261 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.15261 of 2013

Sri Karthikeya Spinning & Weaving
Mills Private Limited, Unit B,
Coogalur, Odathurai Post,
Gopichettipalayam.
Rep. by its Managing Director

..... Petitioner

-Versus-

1.The Deputy Chief Inspector of Factories,
Erode.

2.Kovai Periyar Mavatta Dravida Panchalai
Thozhilalar Munnetra Sangam,
69, Tatabad Street No.3,
Coimbatore 641012,
now functioning at
204, V.K.Krishnan Road,
Siddhapudur,
Coimbatore 641 044.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to
issue a Writ of Certiorari calling for the records of the 1st respondent in File
No.0072/11 and to quash the order of the 1st respondent dated 18.02.2013.



WEB COPY



W.P.No.15261 of 2013

*For Petitioner : Mr.G.Anand Gopalan for
M/s.T.S.Gopalan & Co*

*For Respondents : Ms.Ramapriya Gopalakrishnan
for R2
Mr.J.C.Durai Raj,
AGP for R1*

ORDER

This writ petition challenges the order of the 1st respondent dated 18.02.2013 in File No,0072/2011 whereby the request of the petitioner management to engage the services of an advocate was rejected.

2. There was a dispute between the management and the 2nd respondent with respect to conferment of permanent status to its employees, who were members of the 2nd respondent Union. In the said proceedings, the management wanted to engage an Advocate to represent them before the 1st respondent. The 1st respondent did not accede to such request and rejected the same by virtue of the impugned order. Challenging the same, the management has approached this court by way of the present writ petition.

3. Mr.Anand Gopalan, learned counsel appearing for the management would argue that under Section 30 of the Advocates Act, 1961, (which has been recently notified, but, not while passing the impugned order) every advocate, whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which the Advocate Act, 1961, extends. This



W.P.No.15261 of 2013

provision applies:-

WEB COPY

(i) in all courts including the Supreme Court
Court;

(ii) before any tribunal or person legally
authorized to take evidence; and

(iii) before any other authority or person before
whom such advocate is by or under any law for the time
being in force entitled to practise.

4. He would state that his case falls under the third category and therefore, the rejection by the 1st respondent of his request to engage an advocate is not proper.

5. He would further point out that under Section 33 of the Advocate Act, there is no bar as found in sub-sections (3) & (4) of Section 36 of the Industrial Disputes Act, 1947 and therefore, I have to read into The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (hereinafter will be referred to as “the TN Act 46 of 1981”), a right to engage an advocate.

6. Mr.Anand Goapalan would also submit that wherever a provision has



W.P.No.15261 of 2013

been brought about barring an advocate from appearing before a court, or tribunal or authority, the court has struck it down as unconstitutional.

Therefore, he would state that as a consequence of those judgements, a right to engage an advocate to represent a person should be available across the board.

He would rely upon the judgement of this court in **The Management, Hindustan Motors Earth Moving Equipment division Ltd. v. The Presiding Officer, Principal Labour Court, Chennai [2007 (2) CTC 31]**. 7. Per

contra, Ms.Ramapriya Gopalakrishnan, learned counsel appearing for the 2nd respondent union would argue that there is no right to engage an advocate by the management. She will put in a twist on the arguments of Mr.Anand Goapalan that since there is no provision akin to Section 36 of the Industrial Disputes Act, 1947, under the TN Act 46 of 1981, there is no right for the management to engage an advocate. In support of her case, she would rely upon a judgement of this court in **National Horticultural Research Development Foundation (NHRDF) v. P.Murugesan and another [2010 SCC OnLine Mad 3833]**.

8. The issue that I have to decide is whether under The Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, a right to engage an advocate exists.



W.P.No.15261 of 2013

WEB COPY

9. A perusal of Sections 3, 4 & 5 of TN Act, 1981 are essential. Section 3 of Section 3 states that a permanent status will be conferred on a workman, who has been in service for a period of 480 days continuously in twenty-four calendar months. In order to confer that the Government under Section 4 is entitled to appoint Inspectors. As to how the inspector performs his duties is mentioned under Section 5. This activity of the authority has been held to be only a summary procedure. A Division Bench of this Court in **Superintending Engineer, Erode Electricity Distribution Circle, TNEB, v. Inspector of Labour and others [2022 SCC OnLine Mad 1003]**, after extracting the aforesaid provision and the judgement of the Supreme Court in **Steel Authority of India Limited v. National Union Waterfront Workers [(2001) 7 SCC 1]**, had held that the labour inspector has the power to issue an appropriate order to grant permanency to a workman. It further held that he does not have power to adjudicate the complicated questions of fact and law. I extract hereunder the relevant portion from the aforesaid judgement:-

“22. In view of the above, while we are of the view that the Labour Inspector has the power to issue appropriate order to grant permanency to the workmen, it cannot be by adjudicating the complicated questions of fact and law. A perusal of the Act of 1981 does not provide power in Labour Inspector of the nature given to



WEB COPY



W.P.No.15261 of 2013

the Industrial Adjudicator, i.e., the Industrial Tribunal or Labour Court, as complete framework with procedure for it has been given under the Act of 1947. Certain provisions of the Civil Procedure Code have been made applicable therein for proper adjudication which does not exist under the Act of 1981.”

10. Therefore, a perusal of the aforesaid judgement makes it very clear that the authority does not have power or the frame work that industrial adjudicator, like the labour court has under the Industrial Disputes Act, 1947. Even under the Industrial Disputes Act, 1947, there is no right for either party to engage the services of an advocate in all situations. The relevant provision, which supports this conclusion, is Section 36 of the Industrial Disputes Act, 1947. Sub-section (3) of Section 36 of the Industrial Disputes Act, 1947, specifically states that no legal practitioner can be engaged in conciliation proceedings or in any legal proceedings by a court. It is clarified under clause (4) that before a labour court, tribunal or national tribunal, if the opposing side consents to engaging an advocate then, the other party is entitled to engage an advocate. The very fact that similar provision is absent under the TN Act 46 of 1981 would show that the intention of the legislature was not to grant such right.

11. When this was pointed out, Mr.Anand Gopalan, learned counsel,



W.P.No.15261 of 2013

drawing my attention to Section 30 of the Advocate Act, 1961 would argue that under Section 30 of the Advocate Act, 1961, an advocate, who is enrolled with the State Bar Council, can appear before any other authority or person as contemplated under clauses (i) to (iii).

12. A careful reading of the above would clearly show that under clause (iii) of Section 30 of the Advocate Act, 1961, every Advocate is entitled to appear if such entitlement is positively conferred in the provision. I will not read the word “entitlement” as a permission in all cases. The Act does not define the term “entitlement” and therefore, I have to necessarily rely upon the ordinary meaning given to it under The Oxford Dictionary. I also made a reference to The Black's Law Dictionary and I did not find the word “entitlement” having been defined.

13. Under The Oxford Dictionary, the word “entitlement” which is a noun, for which the corresponding verb is, “entitle”, means “to give a right to”. Therefore, reading this in the light of clause (iii) of Section 30 of the Advocates Act, 1961, it becomes clear, that under clause (iii) of Section 30 of the Advocates Act, a right to appear must be specifically given. In other words, an “entitlement” to appear before any other authority or person. In the absence of such entitlement, clause (iii) of section 30 of the Advocates Act, 1961, does not



W.P.No.15261 of 2013

come to the rescue of the petitioner.

WEB COPY

14. One further aspect that Mr.Anand Goapalan argued was that wherever the parliament and state legislature had barred the Advocates from appearing, the same had been struck down and, therefore, I have to presume that the law is, that an advocate is entitled to appear in all matters.

15. Barring an advocate to appear in a proceeding is different from granting permission to him to appear. One is positive in nature and the other one is negative. Merely because negative right of it has been denied, does not mean the positive right has been given to any party to engage an advocate.

16. Now turning to the authority cited by Mr.Anand Goapalan in **The Management, Hindustan Motors Earth Moving Equipment division Ltd. v. The Presiding Officer, Principal Labour Court, Chennai [2007 (2) CTC 31]** that was a judgement on interpretation of Section 36 (4) of the Industrial Disputes Act, 1947. It did not deal with the situation of the right of a party to engage an advocate in a summary proceeding. Further, in the facts of that case, it is seen that the workman had engaged a legal practitioner, who was also a trade union leader. Therefore, the court had interfered with the order of the labour court and held, that if one side has a right to engage an advocate, equally, the other side is also entitled to engage the services of an advocate. This



is to set a level playing field for both sides.

WEB COPY

In the result, the writ petition fails and the same is dismissed accordingly. No costs.

23..06..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To



W.P.No.15261 of 2013

1. The Deputy Chief Inspector of Factories,
Erode.



WEB COPY



W.P.No.15261 of 2013

V.LAKSHMINARAYANAN, J.

kmk

W.P.No.15261 of 2013

23..06..2023